



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1005]

RIN 1625-AA00

Safety Zone; Marina Salvage, Bellingham Bay, Bellingham, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a safety zone in and around the Squalicum Harbor Marina, located in Bellingham, WA. This action is necessary to ensure the safety of the maritime public and the on-scene law enforcement, and salvage vessels by preventing contact with associated debris, and sunken vessels, and will do so by prohibiting vessels from entering or remaining in the safety zone unless authorized by the Captain of the Port or his Designated Representative.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 11:59 p.m. April 13, 2012. The safety zone has been enforced with actual notice since 12 a.m. on April 5, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-1005 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1005 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Nathaniel P. Clinger, Waterways Management Division, Coast Guard Sector Puget Sound; Coast Guard; telephone 206-217-6323, e-mail [SectorPugetSoundWWM@uscg.mil](mailto:SectorPugetSoundWWM@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision

authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing a NPRM would be contrary to public interest since immediate action is necessary to protect vessels, persons and law enforcement vessels in Bellingham, WA, from hazards created by a marina fire, which produced sunken vessels, and requires emergency salvage operations. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Normal notice and comment procedures cannot be followed due to the immediate threat of collision and/or exposure to hazardous debris associated with the marina salvage operations.

#### Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department

of Homeland Security Delegation No. 0170.1.

On March 30 at approximately 5:32 a.m. the Coast Guard received a report that a house boat exploded, in the Squalicum Marina in the Bellingham Harbor, which ignited a boat house and sunk multiple vessels. On April 4, 2012 the Coast Guard was notified that the salvage operations to recover approximately 10 sunken vessels will require a safety zone that exceeds the timeline of the initial zone. Due to ongoing salvage operations, which may include cranes and vessels utilizing dive teams, the Coast Guard will establish a safety zone of all waters of the Squalicum Harbor Marina and all waters within 200 yards of the entrance to the marina, located in Bellingham, WA. Enforcement of this zone will commence at 12:00 a.m. on April 05, 2012. The safety zone created by this rule is necessary to help ensure the safety of maritime public and the personnel involved in the salvage operations. It prevents navigation in areas that may contain debris and hazardous materials produced from the boat house and damaged vessels.

#### Discussion of Rule

The Coast Guard is establishing a safety zone which encompasses all waters of the Squalicum Harbor Marina and all waters within 200 yards of the entrance, in Bellingham,

WA. Vessels wishing to enter the zone must request permission for entry by contacting the on-scene patrol craft on VHF CH 13 or Joint Harbor Operation Center at (206) 217-6001. Once permission for entry is granted vessels must proceed at a minimum speed necessary for safe navigation.

#### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This rule is not a significant regulatory action due to being limited in size and duration.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of

small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators vessels intending to transit the affected waterway during the period mentioned. This safety zone will not have a significant economic impact on a substantial number of small entities because the zone established in this rule is limited in size and short in duration.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business

and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular,

the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments



This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use

voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. An environmental analysis

checklist and a categorical exclusion determination will be available in the docket where indicated under ADDRESSES.

List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add a temporary § 165.T13-215 to read as follows:

§ 165.T13-215 Safety Zone; Marina Salvage, Bellingham Bay, Bellingham, WA.

(a) Location. The following area is designated as a safety zone: All waters of the Squalicum Harbor Marina and all waters within 200 yards of the entrance to the marina, located in Bellingham, WA.

(b) Regulations. In accordance with the general regulations in 33 CFR 165, Subpart C, vessels wishing to

enter the zone must request permission for entry by contacting the Joint Harbor Operation Center at (206) 217-6001 or the on-scene patrol craft on VHF CH 13. Once permission for entry is granted vessels must proceed at a minimum speed necessary for safe navigation.

(c) Enforcement period. This rule will be effective from 12 a.m. on April 5, 2012, through 11:59 p.m. on April 13, 2012, unless cancelled sooner by the Captain of the Port.

DATED: April 4, 2012

S. J. Ferguson  
Captain, U.S. Coast Guard  
Captain of the Port, Puget Sound

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